IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Crl.MC.No. 2784 of 2007()

L.P. NO.9 OF 2000 IN
CC.53/1998 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II,
PERINTHALMANNA

.....

PETITIONER: ACCUSED

ABDUL SAMAD,AGED 48 YEARS,
S/O. MUHAMMED,KAPPILAKATH MELETHIL,
AYISHA MANZIL, THELAKKAT, PTTIKKAD,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.ABDUL JAWAD

RESPONDENTS:

STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI. KAMAPPU.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No. 2784 OF 2007

Dated this the 6th day of September, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.498-A of the IPC initiated by his wife as early as in 1998. Cognizance was taken on the basis of a final report submitted by the police after due investigation. The crime, in turn, was registered on the basis of a private complaint filed by the petitioner's wife which the learned Magistrate had referred to the police under Sec.156(3) of the Cr.P.C. Investigation was complete. Final report was filed. The case was registered as C.C.No.53/98. The offences alleged are the one punishable under Secs.323, 342 and 498-A of the IPC. The petitioner has not appeared before the learned Magistrate so far. The learned Magistrate had hence transferred the case to the list of Long Pending Cases in the year 2000. Even thereafter, the petitioner has not entered appearance.

2. According to the petitioner, he is absolutely innocent. He is discharging his duty to maintain his wife very promptly. He had no idea about the pendency of the proceedings. No notice or summons had ever been served on him. He was employed abroad. It is, in these circumstances, that the petitioner could not appear before the learned Magistrate. It would be incorrect to reckon him as an absconding accused. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But the petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is therefore prayed that directions under Sec.438 and/or Sec.482 of the Cr.P.C. may be issued in favour of the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the petitioner must appear before the learned Magistrate and seek regular bail in the ordinary course. There is no reason to issue any direction under Sec.438 and/or Sec.482 of the Cr.P.C.

4. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary and another v. State of Bihar**

(AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

6. In the result, this application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to

the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

7. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge